

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY MARSHALL,

Plaintiff,

No. CIV S-04-1657 DFL PAN P

vs.

DEPUTY CASTRO, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Plaintiff is a former state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. By court order filed February 8, 2005, the court found that the complaint stated a claim against inter alia, defendant Davis and ordered plaintiff to complete summons for service within thirty days. By court order filed April 13, 2005, the court ordered service by the United States Marshall on, inter alia, defendant Davis. On October 26, 2005, the United States Marshall returned service unexecuted as to defendant Davis; the notation on the form indicated that plaintiff had withdrawn his complaint against defendant Davis. In an order filed December 28, 2005, the court indicated that it appeared the plaintiff wished to withdraw claims against defendant Davis and that the court would dismiss such claims under Federal Rule of Civil Procedure Rule 41(a) unless plaintiff indicated within 10 days that he wanted to pursue them. Plaintiff has failed to respond in any way to this aspect of the December 28, 2005 order.

1           Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's claims against  
2 defendant Davis be dismissed without prejudice. See Fed R. Civ. P. 41(a)(2).

3           These findings and recommendations are submitted to the United States District  
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
5 days after being served with these findings and recommendations, plaintiff may file written  
6 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
7 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
8 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
9 F.2d 1153 (9th Cir. 1991).

10 DATED: August 24, 2006.

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13 UNITED STATES MAGISTRATE JUDGE

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